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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,531	08/21/2003	Ronald D. Green	GREE2000	5981
23590	7590	06/15/2005	EXAMINER	
RICHARD L HUFF 19304 OLNEY MILL ROAD OLNEY, MD 20832			AFTERGUT, JEFF H	
			ART UNIT	PAPER NUMBER
			1733	
DATE MAILED: 06/15/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

10/644,531

Applicant(s)

GREEN, RONALD D.

Examiner

Jeff H. Aftergut

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnson (US 6,613,186).

Johnson taught that it was known to form an aerosol solvent weld cement from a combination of a polymer which included CPVC, ABS, and PVC (column 3, lines 59-column 4, line 16) which made up 10-30 percent of the total weight of the composition, at least one solvent for the polymer plastic which included THF, acetone, DBE, and MEK (column 3, lines 5-58) which made up 25-75 percent of the mixture and a propellant for the polymer solvent solution which included DME and HFC which make up 15-25 percent of the solution. The reference included a stabilizing compound in the solution, see claim 9. the container included an omnidirectional valve which allowed the container to be turned upright to dispense the material, see column 7, lines 25-40.

3. Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Macher et al.

Macher et al taught a solvent welding cement composition which included a polymer for welding the pipes together which included CPVC, PVC, and ABS in an

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amount from about 15-20 percent, column 2, lines 48-column 3, line 2, a solvent system for the plastic material including THF and acetone in an amount of 30-75 percent, column 3, lines 3-37, claim 1, and an aerosol propellant of DME for example which makes up 20-40percent of the solution, see column 4, lines 5-12. the reference suggested that a dye could be included in the composition, see column 3, lines 64-column 4, line 3.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of any one of Kitabayashi '473, Kitabayashi '203, Kuffer, Green, or Abplanalp and Pratt et al.

Johnson related to a process for welding plastic pipes via a solvent welding operation wherein the solvent cement was applied from an aerosol container. The reference suggested that those skilled in the art at the time the invention was made would have provided the aerosol container with a mixture of at least one polymer capable of welding ends of plastic pipes, at least one solvent for the polymer and at least one propellant within the solvent polymer solution. The reference additionally suggested that the container for the solution of the aerosol included a female aerosol

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valve assembly 16 as well as a spray controller 22 which enabled the aerosol solvent cement solution 100 to be dispensed when the container was inverted. The reference made it clear to those skilled in the art that the female valve assembly would have included the structure of, for example, the female valve assembly of any one of US Patents 3,033,473, 3,061,203, 3,074,601, 3,209,960, or 5,027,985, each of which are cited herein. The reference suggested that it preferred to utilize the female nozzle assemblies. It should be noted that the female nozzle assemblies of each of these references include the recited structure of the omnidirectional valve. Additionally, the reference to Johnson suggested that one skilled in the art look to US Patent 4,572,406 for the particulars of the controller 22. the applicant is referred to the US Patent '406 which recited the same structure as applicant's recited omnidirectional attachment. It would appear that the recited combination in Johnson would have anticipated the recited claimed structure for the aerosol container. Additionally, the reference described the use of the aerosol container for solvent welding two pipes together, see paragraph. While it is believed that the reference anticipated the claimed invention alone (one would have been led to look to the other references cited as US Patent 4,572,406 was incorporated by reference and Johnson expressed a preference for any of the female valves of the patents listed above), it additionally would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the specified female valve from the identified list of female valves as taught by any one of Kitabayashi '473, Kitabayashi '203, Kuffer, Green, or Abplanalp in the aerosol container of Johnson as Johnson suggested a preference for such female valves wherein the device additionally

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included the controller which allowed for inverted application of the cement as suggested by Pratt et al.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1 and 10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of U.S. Patent No. 6,652,704. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the earlier patent taught the three major components of the solvent weld cement disposed in a container which included an omnidirectional valve therein and as such encompass the new claim as presented.

8. Claims 1-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,652,704 in view of either one of Johnson or Macher.

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The earlier patent suggested the combination of the solvent, the polymer and the propellant, however it gives no specifics as to the make up of the specific components in the solution. As discussed above, however, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the specific polymers, propellants as well as solvents and to include the specified percentages of the same as suggested by either one of Johnson or Macher in the manufacture of a solvent weld cement for joining pipes. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the specific polymer compositions of either one of Macher or Johnson in the solvent weld solution container of U.S. Patent 6,652,704.

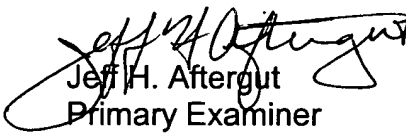
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 571-272-1212. The examiner can normally be reached on Monday-Friday 7:15-345 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on 571-272-1156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jeff H. Aftergut  
Primary Examiner  
Art Unit 1733

JHA  
June 13, 2005